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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 TONY PENWELL,

8 Plaintiff,

9 v.

10 WASHINGTON STATE
11 DEPARTMENT OF CORRECTIONS,
et al.,

12 Defendants.

C24-5748 TSZ

ORDER

13 THIS MATTER comes before the Court on a referral notice, docket no. 12, from
14 the United States Court of Appeals for the Ninth Circuit, pursuant to 28 U.S.C.
15 § 1915(a)(3), for the limited purpose of determining whether Plaintiff's in forma pauperis
16 status should continue for his appeal or whether the appeal is frivolous or taken in bad
17 faith.

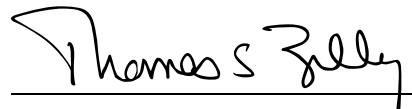
18 An appeal is taken in "good faith" where it seeks review of at least one issue or
19 claim that is found to be "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091,
20 1092 (9th Cir. 2002). An issue is "frivolous" where it "lacks an arguable basis either in
21 law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).
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1 The Court concludes Plaintiff's appeal is frivolous because it lacks an arguable
2 basis in law. For the reasons articulated in the Report and Recommendation (docket
3 no. 6), subsequently adopted by the Court (docket no. 8), Plaintiff's claims are either
4 moot or fail to state a claim. Plaintiff's in forma pauperis status should NOT continue on
5 appeal.

6 IT IS SO ORDERED.

7 The Clerk is DIRECTED to send a copy of this Order to all counsel of record,
8 Plaintiff pro se, and the United States Court of Appeals for the Ninth Circuit.

9 Dated this 22nd day of November, 2024.

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12 Thomas S. Zilly
13 United States District Judge
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